IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc 21675-M of 2007

Date of decision: 1.5.2007

Jagdish Kaur …Petitioner.

Versus

State of Punjab …Respondent

Present: Mr Bipin Ghai, Advocate for the petitioner.
Mr IPS Sihdu, Sr DAG Punjab for the respondent-State.

S.S. SARON, J.

The petitioner is facing prosecution in case FIR 22 dated 17.1.2003 registered at Police Station Barnala, District Sangrur for the offences under Sections 406, 409, 420, 467, 468, 471 and 120B IPC. By way of the present petition under Section 482 CrPC, she seeks permission to go to Canada for 6 months. A further prayer has been made for issuance of directions to the learned Judicial Magistrate Ist Class Barnala for the release of her Passport.

The FIR in the case has been registered on the basis of an information given by a special informer to the effect that during the year 2001-02, the FCI and other government agencies purchased high-quality of paddy from the area of Barnala from various food grain markets and delivered the same to M/s Durga Gram Udhyog Samiti, Barnala and other rice shellers for milling. M/s Durga Gram Udhyog Samiti and the other rice shellers, however, sold the high-quality rice and purchased low-quality rice. The inferior quality was put in the marked bags and delivered to FCI and

other government agencies deceitfully and with a view to earn profits. In this manner, it is alleged that a fraud has been committed with the FCI to the tune of crores of rupees and if a raid was conducted, the conspiracy could be unearthed. On the basis of the information, the FIR for the offences as mentioned above has been registered.

The petitioner, it is stated, is a sleeping partner in the firm and is not in any manner responsible for the conduct of its business. The petitioner was granted interim pre arrest bail by this Court on 10.2.2003 (Annexure P1) and she along with other co-petitioners were directed to surrender their Passports, if any. The interim bail was confirmed on 10.2.2004 (Annexure P2). The petitioner had also filed Criminal Misc 36354-M of 2004 seeking quashing of the proceedings against her. However, this Court, by an order dated 10.8.2004 (Annexure P3) dismissed the same. In any case, the personal appearance of the petitioner as also petitioners-2 to 8 in the said criminal misc petition, during the trial, was exempted, subject to certain conditions.

Learned counsel for the petitioner submits that the son of the petitioner along with his wife is living in Canada. The daughter-in-law of the petitioner namely Sumanjeet Kaur Dhunna is pregnant and the expected delivery is sometime near 21.8.2007. It is submitted that there is no one to look after her and the petitioner wishes to be by her side during this time. The necessary documents that the daughter-in-law of the petitioner is pregnant and having sufficient income, were placed before the learned trial Court along with application dated 9.3.2007 (Annexure P5), seeking permission to go abroad. The photocopies of the documents have been placed on record as Annexures P6 to P11 with the present petition. The learned trial Judge has, however, vide order Annexure P12 declined the

application of the petitioner to go abroad. It is submitted that in fact further proceedings in the trial Court have been stayed by this Court vide order dated 11.3.2005 (Annexure P4) in the petition filed by Ashok Walia and Pitamber Singh. Besides, it is submitted that the petitioner shall duly abide by the conditions as may be imposed by this Court for the purpose of securing her presence in the pending trial.

In response, learned counsel for the State has opposed the application. It is submitted that the petitioner in case she goes abroad is not likely to return and, therefore, it would be difficult to secure her presence for the purpose of trial. It is submitted that a huge fraud has been committed in the case and the petitioner has already been admitted to bail. Therefore, she be not permitted to go abroad.

I have given my thoughtful consideration to the contentions of learned counsel for the parties.

It is appropriate to note that the petitioner has been granted pre-arrest bail on 10.2.2003 (Annexure P2) and that pre-arrest bail was confirmed on 10.2.2004 (Annexure P3). Nothing has been shown that during this period the petitioner ever misused the concession of bail. It is the case of the petitioner that she is a sleeping partner in the firm. In fact, by order dated 10.8.2004 (Annexure P3) passed by this Court in Criminal Misc 36354-M of 2004, only one of the accused namely Jagan Nath was to appear in person during the trial of the case. Rest of the petitioners in the said petition including the petitioner herein were given opportunity to appear through their counsel. Nothing substantial has been carried out in the trial of the case as further proceedings are stated to have been stayed by this Court.

The question, therefore, that is required to be seen is whether the petitioner is liable to be granted permission to travel abroad or not. The Supreme Court in ***Srichand P. Hinduja v. State through CBI, New Delhi*** AIR 2002 SC 401 granted permission to go abroad to the accused in the said case. The case related to offences punishable under Sections 120-B and 420 IPC as also under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act. In the said case also, a plea was raised that if the applicants therein were permitted to go abroad, it would affect the smooth progress of the trial and there were reasonable grounds to believe that they would not return back to India to face the trial. It was noticed that the applicants therein were Indian Nationals at the time of registration of the FIR and thereafter they had acquired British and Swiss Nationalities. The Hon'ble Supreme Court, after considering the facts and circumstances of the case as an interim measure allowed the accused therein to go abroad subject to their furnishing adequate sureties.

This Court in ***Brij Bhushan Singal v. Central Bureau of Investigation*** 1994(3) RCR 498 which is a case where the Special Judge granted bail to accused therein but impounded his passport to prevent him from going abroad, held that it was competent to review the order under Section 482 CrPC and order release of the passport. Accordingly, the accused therein was permitted to go abroad and then return within four months subject to his furnishing security in the sum of Rs 25.00 lakhs.

The Hon'ble Kranataka High Court in ***Brijesh Singh v. State of Karnataka*** 2002(2) RCR (Cr) 330 held that passport is the property of the person and permitted the delivery of custody of passport on furnishing security to the tune of Rs 2.00 lakhs. Besides, the order of Magistrate relating to delivery of custody of passport was neither interlocutory order

simplicitor nor final order and revision against the said order was held to be maintainable.

The Hon'ble Delhi High Court in ***Manmohan Singh v. CBI*** 2004 Criminal Law Journal 2919 considered the contention of the petitioner therein who had traveled abroad with permission of the Court on as many as eight occasions and on each occasion the Court had desired of him to furnish a bank guarantee/FDR for a substantial amount. It was held that where the petitioner had been allowed to travel abroad on various occasions and had not belied the trust of the Court bestowed upon him and neither caused any obstruction in the trial nor has he abused his liberty, in any manner, it would be appropriate and in the interest of justice to modify the condition of bail that requires him to surrender his passport to the Court and not to leave the country without prior permission of the Court by deleting the same.

This Court in the matter of ***Jaipal Singh v. State of Haryana*** 2004(4) RCR (Cr) 521 allowed the prayer of the petitioner therein to go to England to see his son and daughter who were studying there. The petitioner who was Deputy Superintendent of Police was facing trial for the offences under Sections 364, 34 IPC. The permission sought for going abroad was opposed by the CBI on the ground that earlier the trial had not commenced and now that the trial had started and three prosecution witnesses had also been examined, there were chances that the petitioner therein may not return back, if he was allowed to go abroad. This Court allowed the petitioner therein to go abroad on certain peremptory terms and conditions.

In the present case, as has been noticed, the petitioner wishes to go abroad to be with her daughter-in-law whose expected delivery is

sometime in August 2007. The only apprehension of the respondents is that the petitioner may abscond. However, for this peremptory conditions can be imposed.

In the afore noticed circumstances, it would be just and expedient to allow petitioner to go abroad for a period of 6 months to be counted from the date she leaves India subject to peremptory conditions as enumerated herein:

i) The petitioner shall execute a personal bond for a sum of Rs 2.00 lakhs to the satisfaction of the trial Magistrate undertaking to appear in Court after her visit abroad. In the bond, she shall bind herself to return from abroad and inform the trial Magistrate about her return.

ii) The petitioner shall furnish a surety in the same amount of Rs 2.00 lakhs to the satisfaction of the trial Magistrate undertaking therein that if she does not come back within a period of six months from the date she leaves the country, the security furnished shall stand forfeited.

The criminal misc petition is allowed in the above terms.

1.5.2007. (S.S.SARON)
ASR JUDGE